



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

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47 NMB No. 2
October 18, 2019

Elizabeth Tursell
Associate to the General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Re: NMB File No. CJ-7199
NLRB Case No. 20-CA-23100
Menzies Aviation, Inc.

Dear Ms. Tursell:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Menzies Aviation, Inc. (Menzies or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. §151, *et seq.* On January 19, 2019, the National Labor Relations Board (NLRB) requested an opinion regarding whether Menzies' operations are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that Menzies' operations and fueling employees working at San Francisco International Airport (SFO) are subject to the RLA.¹

I. PROCEDURAL BACKGROUND

On November, 13, 2018, Renaldo Navarro (Navarro) filed an Unfair Labor Practice Charge with the NLRB. Navarro alleges that on August 29, 2018, Menzies violated Section 8(a)(1) of the National Labor Relations Act (NLRA) by terminating him because of his protected concerted activity. During the NLRB's investigation of the charge, Menzies contended it falls under the jurisdiction of the RLA. Conversely, the Charging Party contended Menzies is subject to NLRA jurisdiction.

¹ For the reasons set forth in her dissent in *ABM Onsite Services*, 45 NMB 27, 36 (2018), Member Puchala disagrees with her colleagues' decision to return to the six factor analysis for determining carrier control in jurisdiction cases. In the instant case, however, she agrees that there is sufficient record evidence of carrier control over personnel decisions and the manner in which the Menzies employees perform their duties to establish RLA jurisdiction.

On January 19, 2019, the NLRB referred the case to the NMB for an advisory opinion on the issue of jurisdiction. The NMB assigned Norman L. Graber to investigate.² On September 4, 2019, the NMB reassigned the case to John S.F. Gross. The NMB's opinion is based on the request and the investigatory record provided by the NLRB.

II. FINDINGS OF FACT

Menzies is an airline services company that operates at airports worldwide. At SFO, it has contracts to provide direct, into-plane fueling services to approximately 90 percent of the airlines operating there, including Air Canada, Alaska Airlines (Alaska), American Airlines, Copa Airlines, Sky West, Southwest Airlines (Southwest), United Airlines, and Virgin America. Menzies acquired its SFO fueling operations when it purchased the prior operator, Aircraft Service International Group, Inc. (ASIG), on February 1, 2017.³

At SFO, Menzies employs approximately 90 fueling employees who are represented for collective bargaining purposes by Service Employees International Union, United Service Workers West (SEIU). Menzies recognized the SEIU and adopted its collective bargaining agreement (CBA) with ASIG when it acquired ASIG in 2017. That CBA is effective for the period April 1, 2015 to March 31, 2018, and covers the following job titles: Aircraft Service Fuelers, Lead Aircraft Service Fuelers, and GSE Fuelers (collectively, the Fuelers). The CBA expressly states it was entered into by SEIU and ASIG "in accordance with the provisions of the Railway Labor Act."⁴

² The participants were afforded an opportunity to submit position statements to the Board on the issue of RLA jurisdiction. Neither participant submitted a position statement, or any other information, evidence or argument to the Board.

³ Menzies acquired ASIG from BBA Group PLC (BBA), a British corporation that provides aviation support services globally. BBA acquired ASIG (the parent company of Aircraft Services International, Inc., a commercial aviation fueling and ground services company) in 2001, and, at that time, also owned Signature Flight Support (Signature), which primarily provided fixed-based operations (FBO) for privately-owned and charter aircraft, as well as some commercial aviation services. After acquiring ASIG, BBA consolidated all of its commercial airline activities under ASIG, leaving Signature as strictly a FBO provider. *See Signature Flight Support/Aircraft Serv. Int'l, Inc.*, 32 NMB 30, 32-33 (2004); *Aircraft Servs. Int'l Group, Inc.*, 33 NMB 258, 260-261 (2006); *Signature Flight Support*, 34 NMB 1, 4 (2006).

⁴ The CBA also includes a no strike-no lockout provision which states in relevant part that, "The [p]arties hereto agree that during the term of this [a]greement and until any procedures of the Railway Labor Act, as amended, have been exhausted with respect to this [a]greement, under no circumstances shall there be any strike, slow down . . . or other refusal to perform work during the term of this agreement. . ."

Staffing and Scheduling

Menzies' staffing levels and employee schedules are dictated by its customer airlines. The carriers specify how many Fuelers they want Menzies to use to service their contracts, and Menzies schedules its Fuelers based on the flight schedules set by each carrier. When an airline customer increases or decreases its volume of flights, or changes its flight schedule, Menzies must adapt by making appropriate staffing and schedule changes to meet the airline's demands.

Carrier Involvement in Day-to-Day Operations

The Employer communicates on a daily basis with the airline customers it services. The airlines let the Employer's dispatch office know when flights are arriving and how flights are to be prioritized. Each airline customer has an operations person overseeing each flight the Employer services, and these operations personnel communicate with the Employer's supervisors and leads about how the flight should be serviced. The airlines have the final say on how flights are serviced and the Employer's personnel must follow their directions.

The airlines also give direct instructions to Menzies' Fuelers every day, on virtually every flight, and instructions are subject to change in the middle of the fueling process. Although Fuelers are dispatched to particular flights by a Menzies dispatcher (as instructed by airline personnel), once a Fueler is on an assigned flight, s/he routinely receives fuel load instructions directly from airline operations personnel. The airlines instruct the Fuelers on how much fuel to load on each aircraft and how they want the fuel distributed between the aircrafts' fuel tanks. Carriers frequently instruct Fuelers to load fuel to a certain level and then "hold" while they decide whether to add more fuel (referred to as a "fuel and hold" situation). While holding, Fuelers are not permitted to leave the aircraft until released by the airline. In addition, airline personnel oftentimes take Fuelers assigned to one aircraft and direct them to another aircraft they have decided has a higher priority. The airlines' pilots also regularly, and directly, instruct Fuelers regarding additional fuel loads, and Fuelers must abide by those instructions unless the airline instructs otherwise.

Each airline customer maintains its own fueling performance standards that Menzies' Fuelers are required to follow when performing work for that airline. Each airline also provides Menzies with its own fuel manual describing that airline's fueling procedures. For example, Southwest supplies Menzies with

a “Fueling and Fuel Quality Manual” with detailed procedures regarding how to fuel its aircraft. Fuelers are expected to know and follow the procedures outlined in the airlines’ manuals.

In addition, the airlines communicate their requirements and service expectations to Menzies on a regular and ongoing basis. The airlines typically conduct weekly (or more frequent) meetings, and will require the Menzies manager responsible for their accounts to attend. At those meetings, the managers receive feedback or instructions on a variety of topics and metrics, including fueling performance and safety protocols. Managers are expected to relay the information to the team serving the airline.

Airlines also periodically request that the Employer distribute communications to its Fuelers regarding fuel manual procedures, equipment, safety, and other topics, and the Employer complies with these requests.

Carrier Access to Menzies’ Operations and Records

Carriers do not have access to the Employer’s personnel files, but they do have access to employee training records, fueling records, dispatch records, and other records relevant to the fueling operations. Carriers frequently make scheduled and unscheduled audits of the Employer’s records, equipment, and fueling process.

With regard to equipment audits, carriers make sure the Employer’s equipment satisfies carrier requirements and is in good, clean working order. For fueling audits, carriers audit the Employer’s records to ensure all Fuelers are current and in compliance with required training. Auditors also interact directly with the Fuelers, requiring them to demonstrate the direct, into-plane fueling process (to ensure the work is being performed according to the procedures in the airline’s fuel manual), answer the auditor’s questions, and cure any performance issues the auditor may identify. Each airline customer audits Menzies’ fueling operation at least once a year. Given the high percentage of carriers operating at SFO for which Menzies provides fueling services (approximately 90 percent), this equates to a minimum of one audit per month.

Carrier Role in Personnel Decisions and Benefits

Although the carriers have no direct authority to discipline the Employer’s Fuelers, they do have the right to request that they be removed from their accounts, and the Employer has honored those requests when they have been made. In addition, the airlines have significant influence on decisions regarding

discipline of the Fuelers. For example, when an airline customer expresses its dissatisfaction with a Fueler's performance, or reports other employee problems or concerns, it expects Menzies to take corrective action against that employee, and Menzies routinely does so. Airlines also periodically ask the Employer to speak with its Fuelers about performance issues, and the Employer honors those requests. The Employer conducts its own investigation into carrier complaints before making any disciplinary decisions.

Similarly, carriers do not promote Menzies' Fuelers, but do influence promotions by giving Fuelers positive reviews or suggesting that a Fueler be considered for promotion. Carriers routinely recommend that Fuelers be promoted, and those recommendations play a significant role in advancement opportunities for them. If an airline tells Menzies it likes the work performance of a particular Fueler, that employee is typically given a higher-responsibility role serving that airline. Airlines have also suggested to the Employer that a Fueler be considered for the next promotional opportunity, and when an opening arises, that employee has been given the promotion.

The airlines have no role in setting the wages or benefits of the Employer's Fuelers, as those terms are set by the CBA between the Employer and SEIU. On occasion, airlines have asked the Employer to provide incentives to employees (including Fuelers), such as for improved attendance, and the airlines have funded those incentives.

Carrier Control over Training

Carriers require the Employer's Fuelers to complete specific training before working on their aircraft, and they provide extensive training materials to the Employer. The Employer uses these materials to train Fuelers who work on the respective carriers' planes. For example, Alaska provides the Employer with Power Point presentations concerning safety and equipment guidelines, cargo handling, arrival setup, emergency response, inspections, environmental awareness, and additional topics. Air Canada, Copa Airlines, Sky West, and Virgin America provide the Employer with training materials covering similar topics. Further, some carriers, like Air Canada, provide the Employer with tests related to their training materials. In addition to completing the carrier's training, the Fuelers must pass the carrier's tests before working on the carrier's planes. Menzies documents training completion, and maintains airline-specific training records for each of its Fuelers.

Holding Out to the Public

The Employer's Fuelers wear Menzies uniforms. However, customer airlines sometimes give them airline apparel and other items such as hats, lanyards, and jackets with the airlines' logos. The Fuelers may wear a particular airline's apparel when working on that airline's equipment but are not required to do so.

III. DISCUSSION*Applicable Legal Standard*

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB has traditionally applied a two-part test in determining whether the employer and its employees are subject to the RLA. First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction.

Menzies does not fly aircraft and is not directly or indirectly owned by an air carrier. The employees at issue provide direct, into-plane fueling services for numerous carriers at SFO. No participant here disputes that the aircraft fueling work performed by these employees is work traditionally performed by employees in the airline industry; and the Board has previously found that such work is traditionally performed by carrier employees. *See, e.g., Bradley Pac. Aviation, Inc.*, 34 NMB 119 (2007); *Air BP, A Div. of BP Oil Co.*, 19 NMB 90 (1991). Therefore, to determine whether Menzies is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over its operations by its carrier customers.

In *ABM Onsite Services*, the Board found that,

the rail or air carrier must effectively exercise a significant degree of influence over the company's daily operations and its employees' performance of services in order to establish RLA jurisdiction. No one factor is elevated above all others in determining whether this

significant degree of influence is established. These factors include: extent of the carriers' control over the manner in which the company conducts its business; access to the company's operations and records; role in personnel decisions; degree of supervision of the company's employees; whether the employees are held out to the public as carrier employees; and control over employee training. *Air Serv Corp.*, 33 NMB 272 (2006); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 258 (2006); *Signature Flight Support*, 32 NMB 214 (2005).

45 NMB 27, 34-35 (2018)

Carrier Control over Menzies and Its Employees

In this case, the record demonstrates that Menzies' many carrier customers exercise significant influence over its fueling operations at SFO. With regard to staffing, carriers specify in their contracts the number of Fuelers they want assigned to their fueling operations, a number dictated by the volume of flights operated by the contracting carrier. The Fuelers' work schedules are dictated by the airlines' flight schedules, and vary according to changes in those schedules.

Carriers typically assign an airline operations employee to oversee each flight serviced by the Employer with the authority to direct the Fuelers' work and dictate how the Employer and Fuelers should prioritize work. That authority is exercised by the airlines on a daily basis. The Fuelers also must normally abide by instructions given by the airlines' pilots.

Fuelers cannot leave an aircraft until they are released by the airline. During "fuel and hold" situations, Fuelers must remain at the aircraft and wait for additional instructions from the airline. Each airline maintains its own performance standards that Fuelers are required to follow when performing work for that airline. The carriers hold regular (weekly or more frequent) meetings with Menzies to communicate performance expectations and concerns.

Each airline reserves the right to, and does, audit the Employer's fueling and other related records, and fueling procedures and performance. These audits are scheduled and unscheduled, and occur on a frequent basis. Menzies is expected to remedy any problems or deficiencies identified in the audits. Auditors also interact directly with the Fuelers to ensure the work is being performed according to required procedures, and cure any performance issues the auditor may identify.

Carriers have the right to have Menzies' Fuelers removed from their operations, and carrier complaints can and do result in disciplinary action. Similarly, positive feedback and recommendations from a carrier substantially influences promotional opportunities for the Fuelers.

Menzies' Fuelers receive airline-specific training, and carriers require them to complete that training before working on their aircraft. Many of the carriers provide extensive training materials to the Employer. In many cases, in addition to completing the carrier's training, Fuelers must pass the carrier's training tests before working on the carrier's planes.

It should also be noted that the NMB has repeatedly found both Menzies' and ASIG's operations and employees to be subject to the RLA (including operations at SFO, and operations and fueling employees at other airport locations). Beginning in 2003, in cases referred from the NLRB, the Board has determined that Menzies' and ASIG's commercial aviation operations were subject to the NMB's jurisdiction. *Signature Flight Support of Nevada*, 30 NMB 392 (2003) (ramp service, passenger service, fuelers at McCarran International Airport (LAS)); *John Menzies, PLC d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003) (fleet service at Portland International Airport); *John Menzies, PLC d/b/a Ogden Ground Servs.*, 30 NMB 463 (2003) (ground handling services at Los Angeles International Airport); *John Menzies, PLC d/b/a Ogden Servs., Inc.*, 31 NMB 490 (2004) (ground handling, baggage handling, cargo handling, and cabin cleaning at SFO); *Aircraft Servs. Int'l Group, Inc.*, 31 NMB 361 (2004) (fuelers at Detroit Metropolitan Wayne County Airport).

In March 2004, the International Association of Machinists and Aerospace Workers (IAM) filed an application with the NMB seeking to represent ASIG's fuelers and ground handlers at Tampa International Airport. Although the application was ultimately dismissed based on an insufficient showing of interest, the Board found that ASIG was subject to RLA jurisdiction and that the appropriate system for representation under the RLA included all of ASIG's facilities nationwide. *Aircraft Servs. Int'l Group*, 31 NMB 508 (2004).

In three subsequent referrals from the NLRB, the Board again determined that ASIG's commercial aviation operations were subject to the RLA. *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, 32 NMB 30 (2004) (ground handling and ground service equipment maintenance at New York's LaGuardia Airport); *Aircraft Servs. Int'l Group, Inc.*, 33 NMB 200 (2006) (fuelers at Pittsburgh International Airport); *Aircraft Servs. Int'l Group, Inc.*, 33 NMB 258 (2006) (fuelers at Albuquerque International Airport).

In several more recent decisions, the Board once again found ASIG's operations to be subject to RLA jurisdiction. *Aircraft Servs. Int'l Group*, 40 NMB 43 (2012) (in decision addressing application for Fleet Service Employees filed by SEIU, Board found appropriate system for representation included all of ASIG's operations nationwide); *Aircraft Servs. Int'l, Inc.*, 45 NMB 50 (2018) (ASIG's fuelers at LAS are subject to the RLA); *Aircraft Servs. Int'l, Inc.*, 45 NMB 155 (2018) (ASIG's fueling operations and employees at Tulsa International Airport subject to RLA).

And, most recently, in *Menzies Aviation, Inc.*, 46 NMB 8 (2018), the Board found that Menzies' ground handling operations and employees at Fort Lauderdale International Airport were subject to RLA jurisdiction.

The Board's opinion in the instant case is that Menzies' Fuelers at SFO are subject to the RLA which is consistent with its prior determinations concerning Menzies' and ASIG's operations.⁵

In sum, the record shows that Menzies' carrier customers have sufficient control over Menzies' operations and Fuelers at SFO to establish RLA jurisdiction.

CONCLUSION

Based on the record in this case and the reasons discussed above, the NMB's opinion is that Menzies' operations and its Fuelers at SFO are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD



Mary L. Johnson
General Counsel

Copies to: Christopher Ward, Esq.
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⁵ *But see Menzies Aviation, Inc.*, 42 NMB 1 (2014) (ground service work at Seattle-Tacoma International Airport).